

### **Remarks**

#### **Claim Rejections under 35 U.S.C. §102 (Anticipation)**

The Examiner rejected independent Claims 1, 2 and 5-10 under 35 USC §102 as being anticipated by U.S. Patent No. 393,195 (Way). Applicant respectfully traverses the rejection inasmuch as the rejection applies to the claims as amended.

“A claim is anticipated only if each and every element as set forth in the claims is found, either expressly or inherently described in a single prior art reference.” *Vandergaal Bros. v. Union Oil of California*, 814 F.2d 628, 631; 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). MPEP §2131. (Emphasis added). “Every element of the claimed invention must be literally present arranged as in the claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989). (Emphasis added). “The identical invention must be shown in as complete detail as is contained in the...claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989). MPEP §2131. Consequently, to uphold an anticipation rejection, there must be identity of invention.

Amended Claim 1, from which Claim 2 and 5-10 depend, now includes the limitation that the invention comprises a bell-shaped tube and that the horn outlet is configured for receiving the bell-shaped tube. Way does not disclose a bell-shaped tube such that amended Claim 1 is not anticipated. The claims depending therefrom are not anticipated by virtue of their dependency.

The rejection should be reversed.

#### **Claim Rejections under 35 U.S.C. §103 (Obviousness)**

The Examiner rejected Claims 3, 4 and 11-18 as being obvious in view of the teachings of Way and U.S. Patent No. 999,311 (Kather). More specifically, the Examiner asserted that while Way did not teach a retaining collar attached to a horn outlet, Kather taught a “sausage making machine which [was] structurally similar to the applicant's claimed device,” such that with regard to Claims 3 and 4, it would have been obvious to modify the horn of Way with a retaining collar, in view of the teachings of Kather, to create the present invention because “in

order to assist the user in cleaning the horn outlet and direct the material exiting the horn outlet." Additionally, with regard to Claims 11-18, the Examiner asserted that it would have been obvious to modify Way with a retaining collar and tube, in view of the teachings of Kather, in order to assist the user in cleaning the horn outlet and to direct material exiting the horn outlet. Applicant respectfully traverses the rejections inasmuch as they may apply to the claims as amended.

"To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some teaching, suggestion or motivation, either in the references themselves or in the knowledge generally available to one having ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references (or references when combined), must teach or suggest all of the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure." MPEP §2142, citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). (Emphasis Added).

There is no motivation to select the Way or Kather references for combination

"In order to rely on a reference as the basis for rejection of an applicant's endeavor, the reference must be either in the field of applicant's endeavor or, if not, be reasonably pertinent to the particular problem with which the invention was concerned." MPEP §2141.01(a) (emphasis added).

In the present case, contrary to the Examiner's assertions, the device described by Way is not analogous to the present invention and is not in the field of applicant's endeavor. More specifically, the Way reference discloses a device for shaving ice whereas the present invention relates to a device for compressing and stuffing sausage into a casing. Hence, the devices comprise very different structures adapted for very different purposes and functions. The Way device comprises rotatable cutting knives that are powered by a hand crank means which rotates the cutting knives to shave ice. The Way device further comprises a receiving chamber D for

receiving the shaved ice and a discharging device E comprising two plates, c and c, for forcing shaved ice downward into a waiting receptacle. Way does not disclose a bell-shaped tube. The present invention, on the other hand, comprises a bell-shaped tube, which is paramount to the proper operation of the present invention. The bell-shaped tube of the present invention compresses and forces sausage through a small orifice and into a casing. The present invention does not comprise cutting knives rotatable with a hand crank, a receiving chamber or a discharging device for discharging ice from the receiving chamber as required by Way for proper function. Indeed, if one were to fit the device of Way with a bell shaped tube, the device would be inoperable and be incapable of passing and shaving ice. Similarly, the present invention would be inoperable if it did not comprise a bell-shaped tube or were to comprise a pair of rotating cutting knives. Furthermore, the references are separately classifiable owing to their very different structures and functions. The Way reference is classified in Class 241 (Solid Material Comminution or Disintegration), Subclass 92 (Radial comminuting face) whereas the present invention is classified in Class 452 (Butchering), Subclass 30 (Sausage making), Subclass 35 (Stuffing), Subclass 40 (Pump type). The present invention is not concerned with material comminution or disintegration, or rotating faces, but rather, is configured for receiving materials that have already been disintegrated (ground meats and the like). Thus, it is seen that the devices are not structurally similar or in similar fields of endeavor; one is for shaving ice and the other for stuffing sausages.

Additionally, Way is not reasonably pertinent to the particular problem with which the applicant's invention is concerned. Way is concerned with shaving ice and comprises rotatable cutting knives whereas applicant's invention is concerned with stuffing sausages using a bell-shaped tube. Consequently, individuals having skill in the art of sausage stuffing, i.e., stuffing ground material into casings, would not look to devices for grinding and cutting for answers to problems with stuffing.

Finally, in order to render the ice shaver of Way analogous to the sausage stuffer of the present invention, the Way reference would have to be modified in accordance with the applicant's disclosure (using hindsight reconstruction) to comprise a bell-shaped tube; the very

fact that Way would have to be modified to render it analogous serves as evidence the fact that Way, standing alone, is not analogous to the present invention.

With regard to Kather, Kather relates to a sausage stuffer comprising a rotating worm. A sausage stuffer comprising a rotating worm is wholly different from a piston-type sausage stuffer such that one having skill in the art would readily discern the structural differences between the two types of invention and not look to a worm-type stuffer for answers to problems related to a piston-type stuffer. Additionally, a worm type stuffer is differently classified owing to the fact that it is readily identifiable as not being analogous to the present invention. Indeed, Kather is classified in Class 452 (Butchering), Subclass 44 (Screw: subject matter wherein a rotating helix forces material into a sausage casing). Most importantly, however, as described in applicant's specification, stuffers such as the device of Kather do not acknowledge or even address the problems of waste as described in the Applicant's disclosure. As described in applicant's specification (See paragraph [0005]) devices such as Kather's waste substantial portions of sausage mixture because such devices do not allow a plunger/piston to travel along the entire length of a sausage stuffer. More specifically, ground material and the like, e.g., ground meats, can adhere to the worm of the Kather device and cannot be moved toward the outlet orifice absent the addition of further ground material into the inlet orifice.

As a result, it is seen that neither Way nor Kather 1.) is in the field of applicant's endeavor, or 2.) reasonably pertinent to the particular problem with which the invention was concerned. Consequently, there is no motivation to even rely on the references for combination and the present invention is nonobvious in view thereof.

There is no teaching, suggestion or motivation to make to combination/modification propounded by the Examiner.

"Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one having ordinary skill in the art." MPEP §2143.01

(emphasis added). "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the Examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." MPEP §2142, citing *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985) (emphasis added). Furthermore, the Examiner can satisfy his/her burden only by showing some objective teaching in the prior art or that the knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references. *In re Obukowicz*, 27 USPQ2d 1063, 1065 (Bd. of Patent Appeals 1993); *In re Fine*, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988) (emphasis added). Deficiencies of the cited references cannot be remedied by general conclusions about what is "basic knowledge," or "common sense." *In re Lee*, 61 USPQ2d 1430 (Fed. Cir. 2002), citing *In re Fine*. "General conclusions concerning what is basic knowledge or common sense to one of ordinary skill in the art without factual findings and some concrete evidence in the record to support these findings will not support an obviousness rejection." MPEP §2144.03 (emphasis added). Indeed, "to imbue one of ordinary skill in the art with knowledge of the invention ... when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher." *Id*; *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 220 USPQ 303 (Fed. Cir. 1983).

In the present case, neither Way nor Kather contain a teaching, suggestion or motivation to combine/modify reference teachings to create the present invention and the Examiner has not proffered any objective evidence to illustrate that the motivation to make the combination/modification emanates from that knowledge generally available to one having ordinary skill in the art.

With regard to amended independent Claim 1 and original independent Claims 11 and 18, none of Way, or Kather, contain an express or implied teaching, suggestion, or motivation to create the claimed invention and the Examiner has not proffered a convincing line of reasoning as to why the invention would have been obvious to a skilled artisan. Way does not explicitly or



impliedly disclose, teach or suggest a device for stuffing sausage and does not disclose, teach or suggest a bell-shaped tube for stuffing sausage casings or a retaining collar for releasably securing a bell-shaped tube. Kather does not explicitly or impliedly disclose, teach or suggest a piston-type sausage stuffer having a piston traversing a horn from an inlet to an outlet or an arcuate horn as required by Claims 1 and 11. Indeed, such structures are wholly contrary to the Way and Kather devices.

Furthermore, the Examiner has not presented any objective evidence or presented a convincing line of reasoning, other than that reciting information derived directly from the applicant's very own disclosure to illustrate that the teaching, suggestion or motivation to make the combination/modification emanates from that knowledge generally available to one having ordinary skill in the art or that the invention would have been obvious to an ordinarily skilled artisan (See paragraphs [0006], [0011], [0018], [0024] and [0028] of original application discussing cleaning and minimizing waste is discussed). Indeed, as evidenced by the more contemporary references cited in applicant's Information Disclosure Statement, and the prior art cited by the Examiner, heretofore, no one in the art of sausage making has disclosed, taught or suggested a piston-type sausage stuffer wherein the piston is capable of traversing the length of a horn, from a horn inlet to a horn outlet, which have like diameters, and a removable retaining collar for releasably securable a bell-shaped tube to the horn outlet.

Moreover, where the proposed modification or combination of the prior art would render the prior art device being modified useless for its intended purpose or change the very principle of operation of the prior art invention being modified, there is no teaching, suggestion or motivation to make the proposed modification and the teachings of the references are not sufficient to render the claims *prima facie* obvious. MPEP §2143.01, citing *In re Gordon* 221 USPQ 1125 (Fed. Cir. 1984); *In re Ratti*, 123 USPQ 349 (CCPA 1959). As discussed above, the device described by Way is specifically configured for shaving ice and thus comprises a pair of rotatable cutting blades, a hand crank for rotating the cutting blades, a receiving chamber, and a discharging device. Modifying Way in the manner suggested by the Examiner to create a sausage stuffer would render the incapable of shaving ice as the device would no longer

Attorney Docket No.: SAUP:101US  
U.S. Patent Application No. : 10/708,977  
Reply to Office Action of December 15, 2005  
Date: March 15, 2005

comprise cutting blades, a handcrank therefore, a receiving chamber or discharging device.

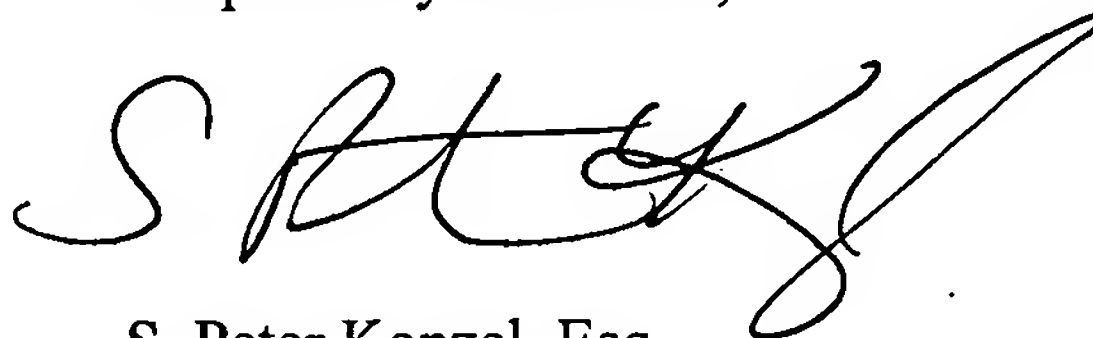
Finally, the Examiner has applied impermissible hindsight reconstruction to use that which the inventor taught, against its teacher. As previously indicated, there is no explicit or implicit teaching, suggestion, or motivation contained in Way or Kather to create the present invention. Additionally, the Examiner has not illustrated or proffered, by citation to any objective evidence, that the motivation to make the combination/modification emanates from that knowledge generally available to one having skill in the art. On the contrary, the Examiner has merely recited the several advantages of the applicant's invention over the prior art, identified by the applicant in his original disclosure.

For the reasons set forth above, Applicant respectfully submits that the present invention is nonobvious in view of Way and Kather such that the rejection should be reversed.

#### **Conclusion**

For the reasons set forth above, Applicant respectfully submits that the present application is now in condition for allowance, which action is courteously requested

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. Peter Konzel', with a stylized flourish at the end.

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Dated: March 15, 2005